



TENNESSEE REAL ESTATE News-Journal

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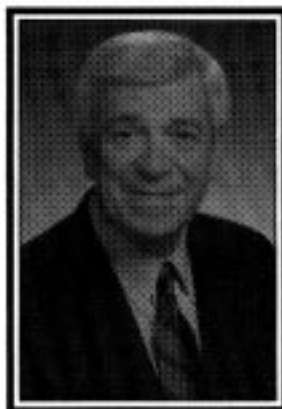
Governor Appoints Three New Commissioners



L.A. Westley



Grace L. Kroeger



Percy Wilkins, Jr.

L.A. Westley, owner and principal Broker for Westley & Associates, Inc. in Memphis, has been licensed in Tennessee for 35 years. Early in his real estate career he was also a teacher for the Memphis City School System and later an administrator in the same school system. Commissioner Westley was the president of the Memphis Area Association of REALTORS in 1996 and is the 1998-99 Vice President for Region 1 of the Tennessee Association of REALTORS. He has been active in Community Development Advisory Committees and the Shelby County Board of Equalization. Commissioner Westley is definitely a dedicated real estate professional who will be an asset to the Commission and for licensees.

Grace Lee Kroeger, a Broker with RE/MAX Real Estate Center in Nashville, has been in the real estate profession for 20 years. She is active in the Williamson County Women's Council of REALTORS, a charter member of the Women Leader Advisors to Congress 1996-97, and has been a member of the Tennessee Republican Executive Committee since 1988. Married to Carroll V. Kroeger, mother

of two and grandmother of four, Mrs. Kroeger's community activities include Friends of the Ballet, 25 years of volunteering for the St. Thomas Hospital Auxiliary and committee work with the Brentwood, Tenn. Chamber of Commerce. At her first Commission meeting in July of this year Commissioner Kroeger stated she was pleased and excited about working to improve the professional status of real estate licensees.

Percy Wilkins, Jr., a Vanderbilt Law School graduate, has specialized in residential real estate transactions for over 30 years. Mr. Wilkins, whose law partner is his daughter Christy W. Ivey, has lived in Nashville since 1961. His interest in real estate and real estate law has been evidenced for over 20 years when he taught at the Institute for Financial Education for the

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Savings and Loan Association in the late 1970's along with his participation in seminars for the Tennessee Association of REALTORS. Commissioner Wilkins was appointed by Governor Sundquist as the consumer member for the Middle Tennessee Area. Mr. Wilkins' experience and legal areas of expertise are already viewed by Commission members as beneficial as they work to enhance their charge of protecting the public.

Three Commissioners Complete Terms

Commissioners Charles Haynes, Paul Holder and Faye Prichard completed their terms on the Commission on June 30, 1998. Their outstanding service to the Commission and to the real estate professionals in Tennessee has been greatly appreciated.

Commission Elects New Officers

Bobbi S. Gillis of Memphis and Frances W. Almany of Hendersonville were elected chairman and vice chairman of the Tennessee Real Estate Commission for the 1998-99 term. Chairman Gillis has served on the Commission since 1995 and served as vice chairman for the past two years. Vice Chairman Almany has served on the Commission since 1995.

**All Real Estate
Licenses Expire
December 31, 1998
Please Renew Early
See Article on Page 2**

Adren Greene Elected REALTOR of Year in Morristown

Commissioner Adren Greene has been selected REALTOR of the Year by the Morristown Association of REALTORS. Greene has served on the Real Estate Commission since 1997 and has been an avid supporter of using mediation in real estate transaction disputes to remedy problems that arise between licensees and clients. Mr. Greene's professionalism in the industry is greatly appreciated by his peers and the Tennessee Real Estate Commission.

Licensees' Names & Addresses Can Be Accessed from Net

Names and addresses of licensees who hold active licenses can be accessed via the internet. The internet address is www.state.tn.us/commerce. After obtaining the home screen, Click on Regulatory Boards Licensees Roster Search. Select Appropriate Board Licensee - ie. Real Estate Broker/Affiliate. Select Search Criteria - ie. Search by Name. Key in a name (last names can be entered either first or last). Press Enter or click on the appropriate area.

It is possible more than one name match will appear. Scan through the matches to determine the individual you are seeking. If you are unsure of the spelling of the name, key in the part you are sure of and you might be able to get at the correct name using this wild card approach. Remember, only those individuals who hold active real estate licenses can be accessed using this system.

Shortcut to the roster screen: www.state.tn.us/cgi-bin/commerce/roster2.pl

Commission Working to Ease Renewal Woes

In order for the administrative office of the Commission to more efficiently process renewal applications for licensees will be mailed approximately six (6) weeks earlier than usual. Because non-principal brokers and affiliate brokers licenses cannot be renewed until it is determined their firms and principal brokers have renewed, it is suggested firms and principal brokers complete their renewal applications early so they can return them timely to the Commission's office which will expedite the renewal process for all licensees.

The Commission's administrative staff is planning to make this renewal period the easiest and smoothest possible for licensees. Please look for renewal applications and return them with the renewal fees upon receipt to help insure timely renewal of licenses.

RESOLVING EARNEST MONEY DISPUTES

By Reid Brogden, General Counsel

A large percentage of the written complaints filed with the Tennessee Real Estate Commission involve earnest money disputes. Typically, either the buyer or seller will complain to the Commission that a licensee is wrongfully withholding earnest money.

Rule 1260-2-.09 governs the disposition of earnest money. That rule reads as follows:

1260-2-.09 DEPOSITS AND EARNEST MONEY.

(1) Each broker shall maintain a separate escrow account for the purpose of holding any funds which may be received in his fiduciary capacity as deposits, earnest money, or the like.

(2) An affiliate broker shall pay over to the broker with whom he is under contract all deposits and earnest

money immediately upon receipt.

(3) Brokers are responsible at all times for deposits and earnest money accepted by them or their affiliate brokers, regardless of whether such funds are actually held by some other person or firm.

(4) Where a contract authorizes a broker to place funds in an escrow or trustee account, the broker shall clearly specify in the contract:

(a) the terms and conditions for disbursement of such funds; and
(b) the name and address of the person who will actually hold such funds.

(5) A broker may properly disburse funds from an escrow or trustee account:

(a) upon a reasonable interpretation of the contract which authorizes him to hold such funds;

(b) upon securing a written agreement which is signed by all parties having an interest in such funds, and is separate from the contract which authorizes him to hold such funds;

(c) at the closing of the transaction;

(d) upon the rejection of an offer to purchase, sell, rent, lease, exchange, or option real estate;

(e) upon the withdrawal of an offer not yet accepted to purchase, sell, rent, lease, exchange, or option real estate;

(f) upon filing an interpleader action in a court of competent jurisdiction; or

(g) upon the order of a court of competent jurisdiction.

(6) Funds in escrow or trustee accounts shall be disbursed in a proper manner without unreasonable delay.

(7) No postdated check shall be accepted for payment of a deposit or earnest money, unless otherwise provided in the offer.

(8) Earnest money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer, unless the offer contains a statement such as Earnest money to be deposited by: _____.

(continued page 3, column 2)

DISCIPLINARY ACTION

August 1998

NANCY DORRIS
License No. 58287
Springfield, TN
Consent Order

Respondent violated a previously agreed order by allowing a newspaper advertisement to indicate she was a Broker while she is an Affiliate Broker.

PENALTY: Respondent paid a civil penalty of \$500.00

September 1998

GREG GREENE
License No. AF24252
Mountain City, TN
Consent Order

Respondent failed to place license with broker and did not identify the fact he was an owner/agent in a blind ad.

PENALTY: Respondent paid a civil penalty of \$1,000.00

RANDY MAYALL BR241587
JANET KRAMER BR250664
Memphis, TN
Consent Order:
Respondent Mayall (owner of

firm) - failure to timely return earnest money; Respondent Kramer, as principal broker, failure to provide adequate supervision.

PENALTY: Respondents paid a civil penalty of \$1,000.00

LICENSE REINSTATEMENTS FOLLOWING FAILURE TO RENEW IN A TIMELY FASHION - LICENSEE(S) SIGNED A CONSENT ORDER AND PAID CIVIL PENTALTY OF \$2500.00

HAROLD G. WEAVER, JR
BR 4747
Nashville, TN

Annual Seminars Continue in October

The 9th Annual Tennessee Real Estate Commission's Seminar has been presented in Chattanooga, Memphis, Jackson, Johnson City and Knoxville. Four more seminars are scheduled for three cities in October. The cities, dates, times and places are listed below:

Cookeville Oct. 27th
Holiday Inn 1:00 PM
970 S. Jefferson Ave.

Columbia Oct. 28th
Nashville Auction 1:00 PM
School
2407 Pulaski Hwy

Nashville Oct. 29th
REALTOR Assn. 9:30 AM
306 Gay St. and
1:30 PM

Topics for instruction and discussion are: 1998 Legislation affecting real estate, earnest money disputes, E&O Insurance and risk management.

Resolving Earnest Money Disputes,

continued from Page 2

The simplest way to resolve a dispute under this rule is to disburse the funds pursuant to a reasonable interpretation of the contract. A broker can simply read the contract, and if the language is clear, disburse the funds to the correct party.

If the broker is not comfortable disbursing the funds under an interpretation of the contract, then it is acceptable to negotiate the disposition of the money through written releases signed by the parties. It is important to note however that a broker can not force any party to sign a release in order to receive the earnest money. The agreement to sign a release is the decision of the buyer or seller and can not be an absolute condition of releasing earnest money that rightfully belongs to one of the parties.

If the contract or the facts surrounding the contract are not clear, and if the parties can not agree on the disposition of the funds, then the obvious alternative is to file an interpleader action to ask a court of competent jurisdiction to determine the correct

owner of the funds. In this instance the broker pays the funds into Court and waives any claim to the funds. The court will then decide the proper party to receive the earnest money.

Most importantly, do not wait until you receive a complaint to resolve an earnest money dispute. You are expected to know what action to take to resolve earnest money disputes and an unreasonable delay in resolving a dispute could result in disciplinary action against your license.

The most important duty you hold as a licensee is the duty to properly handle the funds of others. If you have questions regarding how to resolve a dispute there are many resources available. You can contact your private attorney, your local association or the Tennessee Real Estate Commission.

Prompt action in resolving earnest money disputes can save all parties a lot of paperwork and many headaches later.

**ALL REAL ESTATE
LICENSES EXPIRE
DECEMBER 31, 1998**

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Tennessee Real Estate
News-Journal
is published quarterly by the
Tennessee Real Estate Commission

Members of the Commission:
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Memphis

FRANCES W. ALMANY, Vice Chairman
Hendersonville

ROBERT L. GAMBLE, Public Member
Chattanooga

ADREN GREENE, Member
Morristown

GRACE KROEGER, Member
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JOHN G. LOVE, SR., Member
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BETTY L. SMITH, Member
Memphis

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PERCY WILKINS, Public Member
Nashville

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Internet Advertising Reminder

All advertising, including
advertising on the Internet, is
required to conform with TREC
Rule 1260-2-.12. Please con-
sult your Official Manual of the
Tennessee Real Estate Com-
mission to insure compliance.

"The Tennessee Department of Commerce
and Insurance is committed to principles of
equal opportunity, equal access, and
affirmative action." Contact the EEO
Coordinator or ADA Coordinator
(615) 741-0480, for TDD 615-741-7190



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TREC Phone Numbers:

(615) 741-2273 or 1-800-342-4031

Personnel and Area of Responsibility with
direct phone numbers.

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